IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

CRAIG ALLEN JOHNSON,	§	
Plaintiff	§	
	§	
vs.	§	**CIVIL ACTION NO.**
	§	**Jury Demanded**
TARGET LOGISTICS	§	
MANAGEMENT, LLC	§	

PLAINTIFF CRAIG ALLEN JOHNSON'S ORIGINAL COMPLAINT

I. PARTIES AND SERVICE

1. Plaintiff Craig Allen Johnson ("Johnson") is a citizen of the United States and the State of Texas and resides in Montgomery County, Texas.

2. Defendant, Target Logistics Management, LLC ("Target Logistics" or "the Company") is a foreign corporation formed under the laws of the State of Massachusetts and registered to do business in the State of Texas. It's most current registration with the State of Texas indicates that its principal place of business is 36 Birmingham Parkway, Boston, MA 02135, although its website lists its administrative headquarters as 500 Lincoln Street, Boston, Massachusetts 02134 and its operational headquarters as 2170 Buckhorne Place, Suite 440, The Woodlands, Texas 77380-1775. Target Logistics may be served by serving it's registered agent for service of process, C T Corporation at 1999 Bryan Street, Suite 900, Dallas, TX 75201.

II. JURISDICTION AND VENUE

3. The Court has original jurisdiction over the lawsuit because the suit arises under the FAMILY AND MEDICAL LEAVE ACT of 1993, as amended, (FMLA), 29 U.S.C. § 2601 *et seq* and the UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT of 1994, as amended, (USERRA), 38 U.S.C. § 4301 *et seq*. Johnson was employed as a Regional Operations Manager for Target Logistics, a limited liability corporation doing business within the territorial jurisdiction of the Court. The Court has supplemental jurisdiction under 28 U.S.C.§ 1367 for other claims that are so related to claims in this action that they form part of the same case or controversy under Article III of the UNITED STATES CONSTITUTION.

4. Venue is invoked pursuant to 28 U.S.C. § 1391.

IV. STATEMENT OF FACTS

5. Johnson is a veteran of the Peacetime and Gulf War Era and War on Terrorism Era. He served in the United States Navy from December 26, 1989 through November 1, 1993 and was honorably discharged. Johnson reenlisted on March 6, 1995 and served until he retired from active duty under honorable conditions on May 31, 2011. Johnson received numerous, awards, badges, commendations, ribbons and medals during his twenty years of active duty service.

6. Johnson served as a Naval Hospital Corpsman First Class in both Iraq and Afghanistan. Johnson's twenty years of military service, included over two years in combat.

7. The Navy awarded Johnson the Navy and Marine Corp Commendation Medal

for his exemplary and highly professional service in Iraq from March 2004 through April 2008 during Operation Iraqi Freedom.

8. Johnson's unit deployed to Iraq in 2005 and he was not deployed because he was getting married. While his unit was in Iraq this time, numerous solders in his command came back dead. A close friend was involved in an explosion and came back with a portion of his head blown off, was placed in hospice, and died under Johnson's care. As a medic, it was Johnson's responsibility to dress deceased soldiers' corpses, including his friend's.

9. Johnson was first diagnosed with posttraumatic stress disorder (PTSD) as early as 2005. Symptoms of anxiety and depression have always been included as part of Johnson's PTSD diagnosis.

10. The Army awarded Johnson The Army Commendation Medal, as a member of the Combined Joint Special Forces Task Force, for exceptionally meritorious service from October 2008 to March 2009 during Operation Enduring Freedom in Afghanistan.

11. In August of 2011, Johnson was assessed with an overall disability rating of 60% for combined mental health and physical limitations. While the individual percentages of each condition are not added to determine the combined rating, Johnson's individual service connected disability ratings initially included: (a) post traumatic stress disorder (PTSD) (to include depression and anxiety) 30%; (b) status post abdominal laparotomy surgery for lysis adhesion 10%; (c) left wrist status post surgery with exixtion of avulsed bone and reapproximinaiton of the sixth dorsal compartment with limited motion and scar 10%; (d) right ankle, status post reconstruction surgery with limited motion 10%, and scar

associated with right ankle, status post reconstruction surgery 10%; (e) tinnitus 10%; and, (f) left knee patellofemoral syndrome with limited extension 10%.

12. Johnson was further assessed by the Veteran's Administration in 2011 and then given a combined 80% service connected disability rating, after being additionally rated with partial paralysis of both sciatic nerves at 20% each.

13. Johnson's PTSD symptoms include: anxiousness, feeling depressed, repeatedly having disturbing memories, disturbing dreams or nightmares, attempting to avoid painful memories, feeling distant, feeling overly watchful, super-alert, hyper-vigilant, trouble sleeping, trouble concentrating and remembering.

14. Johnson is limited in the major life activities of concentrating, sleeping, remembering, interacting with others, walking, lifting, bending, sitting, and standing.

15. Johnson began regular psychiatric care with the VA in Conroe, Texas in May of 2011 for PTSD, depression and panic disorder, until he got his first civilian job with Target Logistics.

16. Johnson applied with and was hired by Target Logistics Management LLC, on September 15, 2011, through its operational headquarters in The Woodlands, Texas. This was Johnson's first civilian job since entering the military in 1989.

17. Prior to being hired, Johnson disclosed his mental health and physical limitations to Brad Archer, currently identified on the website as President and Chief Operating Officer of Target Logistics.

18. Johnson was assigned to the Target Logistics' North Dakota camps for his first

position at a starting annual salary of $65,000. Johnson's Camp Manager was Duane. Johnson also reported his limitations and disability rating to Duane when he got to North Dakota. Johnson was on medication for depression and sleeplessness, but initially required no specific accommodation to perform his job. Johnson has always had a desk job with Target Logistics where he could limit and control the physical demands of his job.

19. In North Dakota, Johnson worked 12-18 hour days for five weeks with 2 weeks off. Target Logistics paid for Johnson's transportation to and from North Dakota and his home in Texas. Johnson received continuing treatment and counseling with the Conroe, Texas VA during his two week stints at home from North Dakota.

20. Upon hiring in 2011, Johnson recalls that he was required to acknowledge receiving a handbook, although he was not provided a copy of any employee handbook. He received no training, no employee orientation, and no written policies and procedures from Target Logistics, until April of 2014. In April of 2014, Johnson was forwarded an electronic copy of a Target Logistics Employee Handbook, which was never distributed to him in hard copy, as was represented would be done. Johnson was verbally told by Daniel (Dan) McGahan, Human Resource Manager, that the Handbook was not effective until the hard copy was delivered. Johnson was never delivered a hard copy.

21. Johnson had "Disabled Vet" tags on his personal vehicle from the first day of work for Target Logistics. Johnson also displayed a handicapped placard on his work truck in North Dakota from about mid-2012.

22. Johnson performed well and was promoted to Lodge Manager (Camp

Manager) in late 2011-early 2012.

23. On June 28, 2012, it was announced that Johnson and Greg Hauck were promoted to Regional Operations Managers. Johnson was earning an annual salary of $100,000.00 plus bonuses, travel benefits, and stock options when he left North Dakota on December 17, 2014. Around November of 2012, Johnson's work with Target Logistics was identified as "exceptional" in all rated categories: (a) production; (b) quality; (c) dependability; and, (d) attitude.

24. As Regional Operations Manager, Johnson was responsible for five lodges and six lodge managers who were his direct reports. Johnson also worked with the other Regional Operations Manager, Greg Hauck. Both Johnson and Hauck reported to Travis Kelley, although it seemed that Hauck and Kelley had a personal friendship, which at times seemed to color Kelley's expectations of Hauck.

25. Travis Kelley was on notice of Johnson's disabilities and limitations even before Kelley became Johnson's supervisor. Kelley's dad was retired Air Force and Johnson was retired Navy. Kelley and Johnson frequently discussed the military and the services provided by the Veteran's Administration. Kelley even chided Johnson about the his handicapped placard Johnson had on his company vehicle. Johnson specifically told Kelley he was on medication for anxiety, panic attacks, depression and agoraphobia, related to his PTSD.

26. During his work for Target Logistics, Johnson remained on medication for depression, sleeplessness, agoraphobia, and panic disorder. Johnson required frequent, but

short, breaks for panic attacks which were accommodated without comment by his supervisor, Travis Kelley. Occasionally Johnson would notify Kelley that he was feeling depressed. Although Johnson was included, he did not, and was not required to, attend the voluntary social events with Kelley which were sponsored by the petroleum industry. Johnson had made Kelley aware that those kinds of events, as well as others, triggered panic attacks related to his PTSD..

27. While under the psychiatric and mental health care of the VA, Johnson's medications were adjusted numerous times in an attempt to better treat the symptoms that manifested from his PTSD, Panic Disorder with Agoraphobia, and Major Depressive Disorder diagnoses.

28. Around April or May of 2014, Kelley asked Johnson to assist in an investigation of discrimination against Congolese workers employed by Target Logistics. Several employees from the Congos had complained about racial/ethnic/national origin discrimination by Target Logistics management, namely Jeff Ball and Keith Janakowski. Johnson interviewed and took statements from over 27 employees regarding the complaints about discrimination. Johnson recommended that Ball be terminated. Johnson accompanied Kelley to Dunn Camp and acted as a witness when Ball and Janakowski were terminated.

29. Although Kelley's father was retired military, Kelley appeared to find sport in degrading and making fun of the numerous homeless veterans encountered on the streets of Williston, North Dakota. That conduct bothered Johnson immensely.

30. About May 16, 2014, Johnson was given a letter from his VA psychiatrist

recommending that a trained service dog would be beneficial to his continuing treatment for PTSD.

31. Johnson explained the trained service dog would be individually trained to performs tasks and requested the accommodation from his direct supervisor Travis Kelley. Kelley just laughed at Johnson and stated "No Johnson, you're not going to have a service dog here." Johnson waited a few weeks and asked again on at least three more occasions. Each subsequent time Kelley just said "no," until the final time Johnson asked and Kelley totally ignored him. Johnson quit asking. No one from the Company attempted to engage in any meaningful dialogue with Johnson regarding his request for the trained service dog accommodation.

32. About June or July of 2014, Johnson also asked Kelley for the accommodation of additional time off, intermittent leave, for "medical stuff he had going on." Kelley said he would look into it, but never got back to Johnson about additional time off. Johnson also texted Brad Archer letting him know he needed time off for important medical reasons. Without discussion, or effort by the Company to discuss, Johnson's request for intermittent leave was effectively denied. No one from the Company attempted to engage in any meaningful dialogue with Johnson regarding his request for intermittent leave for "medical stuff he had going on."

33. About August, Kelley told Johnson that he had inquired about the Texas management position with the CCA to see if the company would consider Johnson for the position. Johnson had previously told Travis Kelley, Brad Archer, and Danny Handshoe

many times that he wanted the management job in Texas. It was a job that he was interested in and was a logical promotion. He even told my family that he may have an opportunity to come back to Texas. When Kelley told him that Brad Archer said it "wasn't in the cards," Johnson didn't push further. The job was never posted. Even though the company knew Johnson wanted the position, and was qualified for the position, he was not considered for the Texas position.

34. Around August or September of 2014, Johnson was suffering from migraine headaches so badly, he even went to the VA facility in North Dakota instead of waiting to go to his VA Treatment Center in Texas. Johnson was given medication for immediate relief, but was referred to the Conroe VA Treatment Center for further treatment and diagnostic testing.

35. About September of 2014, Johnson was one of four employees awarded stock options in Algeco Scotsman, Target Logistics' parent company. Johnson recalls that you had to stay employed for a certain length of time for them to be vested.

36. About September of 2014, Johnson learned that Jeff Ball had been rehired by Target Logistics through the Equip System. Ball was hired for the Texas management position Johnson was hoping to get. Ball was made Manager for the Dilley, Texas area which included Carrizo Springs and Pecos. These camps were set up through CCA to house undocumented women and young children from Mexico and South America or for women and young children transiting through Mexico to enter the United States.

37. When Johnson found out that the Texas management position was filled by Jeff

Ball, and he hadn't even been considered, he found it particularly stressful. He was also very outspoken about his opposition to this action because of Ball's prior discriminatory history. He complained to Kelley immediately that it was wrong for the company to hire Jeff Ball as a supervisor, when Ball had been dismissed for discriminatory conduct. It was even worse that Ball was rehired to be placed in charge of undocumented individuals who belonged to protected classes. Johnson told McGahan that rehiring Ball was an huge mistake, an embarrassment, and it humiliated the entire company. Both Kelley and McGahan acknowledged that Ball had been hired back after being terminated, and yet each of them represented to Johnson that he was not happy about the decision.

38. Johnson's request for more time off was merely met with a request to work over Thanksgiving so Greg Hauck could take off for that holiday. The result was that Johnson worked seven weeks in a row, not his regular five, when he was actually requesting more time off for his medical needs. Johnson dutifully complied.

39. Johnson was set to go home to Texas for his scheduled vacation which began December 16, 2014. After Johnson had worked for seven weeks straight, he and about 16 other Target Logistics management personnel attended a company Christmas party in North Dakota on December 15, 2014.

40. Most, if not all, in attendance at the Christmas party were drinking heavily that evening, and continued to drink and party afterwards at some non-company places. At least one of them, David Ludwig, was so publically inebriated, he was cut off from being served. Several of them ended up at the American Legion in the late hours of the evening or early

hours of the next morning. Johnson was the most senior supervisor at the after celebration and really went along to "herd the troops," as Kelley and Hauck did not go. At the American Legion, Johnson playfully pushed Ray Crump and said "damn it Ray, stop it," when Crump tried to grab the cell phone out of Patrick Murphy's hands. Crump was off balance and fell down. As Johnson helped him up, Katherine Westgeest attempted to assist. Johnson commented to Katherine that she was too weak to be any help at all.

41. The next morning at around 2:00 a.m. Katherine emailed Johnson and stated that she didn't appreciate being called "weak and worthless." Johnson apologized for any misunderstanding, but denied calling her worthless.

42. Crump called Johnson the next morning and warned him that Kelley had called asking if he, Crump, felt "threatened" by Johnson. Crump told Johnson he did not feel threatened and that he was not writing a statement as Kelley had requested.

43. It was only after Johnson requested and was denied accommodations for his limitations, and only after Johnson requested and was denied intermittent leave — that on Wednesday, December 17, 2014, when Johnson was supposed to travel home for his three weeks of vacation, Kelley called Johnson to the office and told him that "he didn't want him [Johnson] working there anymore" and that "he didn't trust Johnson." Kelley also told Johnson that Katherine Westgeest had called HR, but didn't say about what. Johnson asked Kelley to reconsider, protesting that he "did good work." Johnson asked to "give his statement" and "couldn't he have the opportunity to explain?" But, Johnson was clear he was fired.

44. Johnson stepped outside Kelley's office, called his wife in Texas, and told her he was just fired.

45. Next, Johnson called Dan McGahan, HR. McGahan asked Johnson to tell him in his own words what happened, and stated that he would get back to him.

46. Johnson then called Brad Archer, President and COO and told Archer there had been a huge misunderstanding, and asked him if this was what was supposed to be happening in North Dakota. Archer was evasive and merely gave Johnson the number for Joseph Murphy, EVP legal.

47. Johnson called Joe Murphy. Murphy told Johnson he had a great deal of respect for him, that he was not fired, and that Johnson should go on and take his vacation and call Murphy when he got home to Texas. Johnson reported his conversations to Kelley, who responded that he "guessed he had been overridden again." So, Johnson presumed then that he was not fired.

48. However, Kelley still insisted on taking Johnson to the airport, stating that he didn't want Johnson to put a "bug in someone's ear," and Kelley kept Johnson's work truck. It appeared to Johnson that he was fired.

49. Johnson called Murphy on the speaker phone from home. Johnson told Murphy that he needed time for PTSD treatment at the VA. Murphy sounded to Johnson as if he were completely supportive. Murphy stated that he approved paid time off, and said he would speak to HR. Murphy told Johnson that there was "an allegation of assault" that since alcohol was involved, he wanted Johnson to take an alcohol screen. Murphy consoled

Johnson, stating that he knew that Johnson "bled Target blue," that "his [Murphy's] brother and uncle had PTSD," that they "were on the same team," that Johnson "didn't even have a concern about his job" — "you'll come back," that the "same position will be waiting for you," "take up to six months if you need it, with pay,""I've got your back," and to "keep him [Murphy] in the loop." Johnson felt he wasn't fired, and that his job in North Dakota would be waiting for him.

50. Murphy also then mentioned that they were looking to move Johnson to a place in Texas. That was good too, as Johnson was looking to be promoted to a Texas position. Murphy then added that it "wouldn't be any $10.00 an hour job." Johnson was confused — maybe he wasn't fired, but it now appeared as if he was demoted?

51. Murphy told Johnson he should not attend the company Christmas party to be held in The Woodlands, Texas — but he was an employee, or maybe not?

52. Almost immediately, Johnson's company email was shut down and his company American Express card was cancelled. As of this day, based on the employer's convoluted, arcane and contradictory communications — and information and belief — it can be presumed that as of December 16, 2014, Target Logistics did fire Johnson, and disguised it under the facade of unlimited leave. All further communications about his return to work were merely referred to by the Company as "job offers."

53. Johnson began more intensive treatment with the VA on December 19, 2014 for prolonged exposure PTSD and panic disorder, mood symptoms and alcohol. When Johnson inquired about alcohol, he was asked by the VA if he thought he needed medication

to curb alcohol temptation — he declined. Johnson's request for alcohol treatment was to satisfy Murphy.

54. Johnson never drank alcohol on duty at Target Logistics and never went to work hung over from excess alcohol. But, because of Murphy's request that he take an alcohol screen, Johnson totally quit drinking and attended VA alcohol counseling to satisfy Murphy's inference that alcohol was somehow a work related problem for Johnson.

55. The VA certified Johnson's visit on December 19, 2014 and marked that "he will not be able to perform his regular work duties until a date to be determined." Johnson provided that documentation to McGahan.

56. At no time did anyone discuss FAMILY AND MEDICAL LEAVE ACT requirements with Johnson.

57. On January 5, 2015, Johnson inquired of Murphy what documentation the Company needed — was there anything that the Company needed to verify his treatment?

58. Johnson normally had two weeks off after working five. This time he had worked seven weeks in a row. His return ticket to North Dakota was for January 8, 2015, but, it didn't appear that he would be returning to North Dakota, at least by January 8, 2015. Johnson was not released to return to work by January 8, 2015.

59. Johnson dutifully kept Joe Murphy and Dan McGahan informed as to his VA medical care with copies and documentation of his mental health treatments until February 17, 2015.

60. About February 3, 2015, Johnson notified Murphy that he would be ready to

return to work on February 17, 2015, after his next VA follow-up visit on February 9, 2015.

61. The VA certified Johnson's mental health visit on February 9, 2015. His Mental Health co-ordinator, Susan Bollom, PAC, marked that "he will be able to perform his regular work duties." It was noted that Johnson "is able to return to work starting February 17, 2015, with no applicable [mental health] restrictions."

62. Johnson was willing and able to return to his position as a Regional Operations Manager or a position with like pay, benefits and other employment terms and conditions as of February 17, 2015.

63. Had Johnson been advised of his statutory rights under the FAMILY AND MEDICAL LEAVE ACT, he would have been informed of his twelve weeks of FMLA leave and when his job protection expired. The expiration of his FMLA depended on what FMLA calendar was used and when the Company began counting — but in any case, it had not expired as of February 17, 2015. Unfortunately, Johnson was totally unaware of his FMLA leave rights and obligations, so the expiration date meant nothing to him — after all, he was told to take all the time he wanted.

64. On February 25, 2015, Dan McGahan, HR, called Johnson and told him that the Company had an "offer of employment" for him to work in Pecos, Texas in a non-exempt Maintenance II position earning $17.00/hour, reporting to Jeff Ball as the Manager of Dilley. Johnson protested that Joe Murphy, Legal, had told him he would return to the same job — at the same salary. McGahan replied that he would talk to Murphy the next morning and "figure it out." So, Johnson was fired, but offered another chance at re-employment?

65. Murphy called Johnson the following day, February 26, 2015, and stated that the hourly job in Texas was all the Company had available. Johnson asked about being returned to the same or equal position with equal wages, benefits, and working conditions. But at that time, Murphy changed his tune and tone and demanded that Johnson "would have to prove himself" under pressure and stress, and only then would the Company consider giving him a management position again.

66. Johnson asked to speak to his wife about it first to which Murphy replied "no problem." Johnson was demoted — or he was fired and offered re-employment at a much lower salary in a much less prestigious position.

67. Johnson was devastated. He did not think he would be able to physically perform in a non-desk job, such as the Maintenance II position he was offered, with the physical limitations he endured from his service connected disabilities. Johnson questioned how he and his family could survive with such a drastic cut in pay. He was also confused, because the Company was already on notice of his mental limitations — and — his physical limitations. Even more debilitating was the apparent switch in Murphy's attitude and support which Johnson had been lead to believe was unlimited. Additionally, the non-exempt location in Pecos meant that Johnson would have to report directly to Jeff Bell, after he had a hand in Bell's termination for discrimination and after he had fought so strongly on principle that Ball should not be rehired.

68. Johnson inquired as to the minimum requirements of the job he was offered, and after a circumspect response from McGahan and repeated requests, on March 8, 2015,

Johnson was provided with a job duties and requirements for the Maintenance II position — the position he was "offered." The requirements were identified as:

(a) maintenance experience;

(b) standing for extended periods of time;

(c) ability to work in extreme temperatures;

(d) walking frequently;

(e) lifting up to 50lbs;

(f) must provide own transportation to and from the camp site;

(g) BCI/ drug screen required; and

(h) valid drivers license.

Johnson was offered a position of employment he could not perform and was threatened that he was terminated if he did not report.

69. Johnson could not even meet the first requirement of the Maintenance II position — he had no previous maintenance experience . Plus, his service connected physical limitations would have rendered him unable to perform the other requirements of the position even if accommodation had been offered. Also incredibly distressing was the degradation to a manual laborer position after his "exemplary" performance as a Regional Operations Manager.

70. Johnson questioned whether he was able to meet the experience and physical requirements of the Maintenance II position. McGahan responded by stating that Johnson was released by his psychologist to return to work without restrictions, and the report to work

date was still March 12, 2015. McGahan concluded by the warning that "failure to report to work will be classified as a voluntary termination. Please notify us if you do not intend to accept this position."

71. Johnson responded to McGahan by pointing out that he had no prior maintenance experience as required, and that the physical requirements of *standing for extended times, walking frequently, and regularly lifting 50 pounds* exceeded his abilities based on his physical limitations. Johnson asked for a "more in depth discussion" because he didn't know exactly what kind of accommodations to ask for. No discussion was forthcoming.

72. McGahan asked for a copy of Johnson's documentation (VA disability ratings) and McGahan insisted that because the February 9, 2015 release to return to work was signed by Johnson's VA psychologist, stating that his release was "without restriction," that Johnson could perform all jobs without restrictions or accommodation — mental or physical. Without even attempting to discuss necessary accommodations with Johnson, McGahan stated "I am working on something that accommodates what you sent to the company yesterday." McGahan chose not to engage in any accommodation discussion as Johnson requested.

73. On March 3, 2015, Johnson filed an EEOC Charge claiming Disability Discrimination, Failure to Accommodate, and Discrimination based on perceived disability, with factual allegations to support his claims that Target Logistics violated the AMERICANS WITH DISABILITIES ACT of 1990, as amended, as well as the TEXAS LABOR CODE, Chapter 21. Johnson supplemented his EEOC Charge on April 3, 2015 with a claim for retaliation

based on his opposition to discrimination under TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 as amended.

74. When Johnson questioned recent anomalies to his March 12, 2015 ACH pay deposit check stub and his 401K matching deposits, McGahan flippantly responded "[i]t is part of the Drive for Operational Excellence program." The paycheck appeared to be Johnson's last, without company matching funds for his 401K.

75. On March 17, 2015, the Company "amended its *offer of employment*." Johnson was then "offered" the position of "Modified – Utility/General Help," also at the Carizzo Lodge, also reporting to Jeff Ball. McGahan enclosed a "Utility/General Help," job description along with a job description for "Camp Manager" with the admonishment that "ALL of our job descriptions include continuous standing/sitting/carrying and other physical requirements, as illustrated by comparing the attached job descriptions — This position is not intended to carry any further physical responsibilities than your prior position with Target — As you can see from the attached job descriptions, each position has similar physical requirements."

76. Johnson felt like the Company created this position just to further humiliate him — which it did. McGahan gave Johnson until March 23, 2015 to "accept this position." On March 23, 2015, Johnson responded with an acknowledgment that he had been terminated, or at least constructively terminated, as no reasonable person in his position would continue to try to work with Target Logistics.

77. The Company did not provide Johnson with detailed information concerning

the his rights and responsibilities under the FAMILY AND MEDICAL LEAVE ACT within a reasonable time after Johnson gave notice of the need for leave.

78. Johnson did not post or keep on its premises the general FMLA notice required under the FMLA.

79. The Company did not provide the notice to Johnson, or any other employee, as required under the FMLA by including a copy of the general FMLA notice in the employee handbook.

80. When the Company acquired knowledge that Johnson's leave may have been for an FMLA qualifying reason, the Company did not give Johnson notice within five business days of his eligibility to take FMLA, as required — or at any time, for that matter.

81. The Company did not provide Johnson with written notice detailing Johnson's specific obligations under the FMLA and explaining any consequences Johnson may incur or has incurred for failing to meet these obligations.

82. The Company has not, at any time, notified Johnson of the amount of leave counted against his FMLA leave entitlement.

83. At no time has the Company advised Johnson that he qualified as a "Key Employee" within the meaning of the FMLA, nor has the Company informed Johnson of the consequences with respect to reinstatement had Johnson been designated as a "Key Employee."

84. During Johnson's three year tenure at Target Logistics, he had never been written up, never counseled, and never had any disciplinary action taken against him. The

Company purportedly has a progressive disciplinary policy which it failed to apply in Johnson's case.

85. Target Logistics, an Algeco Scotsman company, operates in some of the world's most remote environments supporting oil, gas, construction and mining operations; government agencies; disaster relief; and large-scale events with temporary workforce lodging, mobile crew camps and extended-stay hotels. The Company has administrative headquarters in Boston; operational headquarters in The Woodlands, Texas; and offices in Williston, N.D.; Denver; Edmonton, Alberta; and Sydney.

86. Target Logistics is a United States government contractor, subject to provisions under §503 of the REHABILITATION ACT and the VIETNAM ERA VETERANS' READJUSTMENT ACT (VEVRAA) enforcement by the Department of Labor (DOL) and the Office of Federal Contract Compliance Programs (OFCCP).

87. Algeco Scotsman, a privately held company, was created in 2007, when Williams Scotsman (previously, NASDAQ listed) was acquired by a syndicate led by investment funds managed by TDR Capital LLP, a United Kingdom based investment fund manager ("TDR Capital"). TDR Capital merged Williams Scotsman with Algeco (which principally operated in continental Europe), and Elliott (which operated in the UK) to create Algeco Scotsman. Simultaneously, TDR Capital concluded its acquisition of the European assets formerly owned by GE Modular Space, which were also placed into the operating control of the Algeco Scotsman group. In 2012, Algeco Scotsman purchased the Brazilian firm, the Eurobras Group and Ausco Modular and Portacom Building Solutions in Australia

and New Zealand. In 2013, the Company purchased Target Logistics, which operates globally. Algeco Scotsman´s worldwide corporate center is located in Baltimore, Maryland.

V. CLAIMS UNDER THE FAMILY AND MEDICAL LEAVE ACT

88. Johnson is an eligible employee within the meaning of the FMLA. Johnson was employed by Target Logistics for at least 12 months and for at least 1,250 hours of service during the 12-month period preceding the Companies first violation of the FAMILY AND MEDICAL LEAVE ACT of 1993, as amended.

89. Defendant, Target Logistics, is an employer within the meaning of the FMLA. Defendant is engaged in commerce or in an industry or activity affecting commerce and employs 50 or more employees for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year.

90. Johnson was entitled to a total of 12 work weeks of intermittent leave and/or leave during a specified 12 month period because of limitations from Posttraumatic Stress Disorder (PTSD), Panic Disorder with Agoraphobia, and Major Depression, serious mental health conditions that made Johnson unable to perform the functions of his position.

91. Johnson gave defendant notice of the need for intermittent leave and for full leave as was practicable under the circumstances before the date leave was to begin.

92. Johnson provided VA certification of his need for time off, although not requested by Defendant.

93. **Count 1.** Johnson hereby restates and incorporates the preceding paragraphs 1 through paragraph 92 by reference for all purposes. Johnson brings as "Count

1," a claim for interference with his rights under the FAMILY AND MEDICAL LEAVE ACT of 1993, as amended:

(a) Johnson was an eligible employee under the FAMILY AND MEDICAL LEAVE ACT;

(b) Target Logistics was and is an employer subject to the FMLA's requirements;

(c) Johnson was entitled to intermittent leave for a serious health condition;

(d) Johnson gave proper notice of his need and intention to take intermittent leave around May of 2014; and

(e) Target Logistics, by ignoring his request, effectively refused to timely authorize adequate intermittent leave, and thereby interfered with, restrained, and/or deprived Johnson of leave benefits to which he was entitled under the FMLA.

94. As a result of Target Logistic's effective denial of adequate intermittent leave, Johnson was prejudiced, suffered harm and will continue to suffer harm..

95. **Count 2.** Johnson hereby restates and incorporates the preceding paragraphs 1 through paragraph 94 by reference for all purposes. Johnson brings as "Count 2," a claim for interference with his rights under the FAMILY AND MEDICAL LEAVE ACT of 1993, as amended:

(a) Johnson was an eligible employee under the FAMILY AND MEDICAL LEAVE ACT;

(b) Target Logistics was and is an employer subject to the FMLA's requirements;

(c) as an eligible employee, Johnson was entitled to the statutorily demanded notice requirements set out by the FMLA;

(d) Target Logistics failed to provide Johnson with the general notice about FMLA, failed to notify Johnson concerning his eligibility status and rights and responsibilities under the FMLA, and/or failed to notify Johnson whether specific leave was designated as FMLA leave and the amount of time that would count against his FMLA leave entitlement; and

(e) Target Logistics interfered with, restrained, and/or deprived Johnson of rights to which he was entitled under the FMLA when it failed to comply with the statutory employer notification requirements set out under the FMLA, and thereby it effectively denied Johnson benefits to which he was entitled under the FMLA.

96. As a result of Target Logistic's failure to comply with the FMLA statutory notice requirements, Johnson was prejudiced, suffered harm and will continue to suffer harm..

97. **Count 3.** Johnson hereby restates and incorporates the preceding paragraphs 1 through paragraph 96 by reference for all purposes. Johnson brings as "Count 3," a claim for interference with his rights under the Family and Medical Leave Act of 1993, as amended:

(a) Johnson was an eligible employee under the FAMILY AND MEDICAL LEAVE ACT;

(b) Target Logistics was and is an employer subject to the FMLA's requirements;

(c) Johnson was entitled to leave for a serious health condition;

(d) about December 17, 2014, Johnson gave notice of his intention to take leave for a serious health condition; and,

(e) upon Johnson's notice of his intent to timely return, Target Logistics failed to reinstate Johnson to his original, or an equivalent job in terms of pay, benefits, and other employment terms and conditions, and interfered with, restrained, and/or deprived him the benefits to which he was entitled under the FMLA.

98. As a result of Target Logistic's denial of Johnson's right to reinstatement, Johnson was prejudiced, suffered harm and will continue to suffer harm.

99. **Count 4**. Johnson hereby restates and incorporates the preceding paragraphs 1 through paragraph 98 by reference for all purposes. Johnson brings as "Count 4," a claim for discrimination under the FAMILY AND MEDICAL LEAVE ACT of 1993, as amended.

(a) Johnson engaged in protected activity when, about May of 2014, he asked for intermittent leave for "medical stuff;"

(b) he suffered adverse employment action;

(c) adverse employment action was taken because he sought leave which was protected under the FMLA; and,

(d) there is a causal link between his request for intermittent leave the adverse employment action.

100. **Count 5.** Johnson hereby restates and incorporates the preceding paragraphs 1 through paragraph 99 by reference for all purposes. Johnson brings as "Count 5," a claim for discrimination under the FAMILY AND MEDICAL LEAVE ACT of 1993, as amended.

(a) Johnson engaged in protected activity when, about December 17, 2014, he took leave time for intensive continuing treatment at the Conroe, Texas VA for his PTSD; panic attacks, and agoraphobia;

(b) he suffered adverse employment action in that he was effectively demoted or terminated;

(c) adverse employment action was taken because he took leave which was protected under the FMLA; and,

(d) there is a causal link between his leave the adverse employment action.

101. **Count 6**. Johnson hereby restates and incorporates the preceding paragraphs 1 through paragraph 100 reference for all purposes. Johnson brings a claim for discrimination under the FAMILY AND MEDICAL LEAVE ACT of 1993, as amended.

(a) Johnson engaged in protected activity when, about December 17, 2014, he asked for leave time and took leave time for treatment at the Conroe, Texas VA and was cleared for timely return to work on February 17, 2015 and sought to return to the same or equivalent employment;

(b) he suffered adverse employment action in that he was intentionally punished and humiliated by the new "offers" of employment and was thus constructively terminated;

(c) adverse employment action of constructive termination was taken because Johnson sought leave and to sought to timely return to work in substantially equivalent employment which was protected under the FMLA; and,

(d) there is a causal link between his leave and request to return to the adverse employment action.

VI. CAUSES OF ACTION UNDER USERRA

102. **Count 7.** Johnson hereby restates and incorporates the preceding paragraphs 1 through paragraph 101 by reference for all purposes. Johnson brings a claim for retaliation under the UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT ("USERRA"), 38 U.S.C. § 4311, as amended.

(a) Johnson is a veteran and is a member of a protected class;

(b) he applied for and was qualified for a promotion to Manager of the Dilley, Texas locations;

(c) he was denied the denied the promotion without consideration;

(d) the employee promoted, Jeff Ball was not a member the protected class; and,

(e) Target Logistics relied on, took into account, considered, and/or conditioned its decision on Johnson's military status.

103. **Count 8.** Johnson hereby restates and incorporates the preceding paragraphs 1 through paragraph 102 by reference for all purposes. Johnson brings a claim for retaliation under the UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT ("USERRA"), 38 U.S.C. § 4311, as amended.

(a) Johnson is a veteran and is a member of a protected class;

(b) he was qualified for his position as Regional Operations Manager in North Dakota

(c) he was demoted and fired; and

(d) Target Logistics relied on, took into account, considered, and/or conditioned its decision on Johnson's military status.

VII. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

104 . **Count 9.** Johnson hereby restates and incorporates the preceding paragraph 1 through paragraph 103 by reference for all purposes**.** Johnson claims that Target Logistics' conduct constitutes intentional infliction of emotional distress under Texas common law.

105. Johnson claims that Defendant:

(a) acted and willfully, intentionally or recklessly;

(b) its conduct was extreme and outrageous;

(c) its actions caused him additional emotional distress; and

(d) the emotional distress was severe.

VIII. TERMINATION AND/OR CONSTRUCTIVE TERMINATION

106. Johnson hereby restates and incorporates the preceding paragraphs through paragraph 105 by reference for all purposes. Johnson specifically alleges that Target Logistics made the working conditions so intolerable that any reasonable person in his position would have felt compelled to resign.

IX. ATTORNEY FEES

107. Johnson seeks an award of attorney fees, experts witness fees, and other costs of litigation and expenses under the FMLA and/or USERRA. See 29 U.S.C. §2617(a)(3), and 20 CFR §1002.310.

X. DAMAGES

108. As a direct and proximate result of defendant's conduct, Johnson suffered and

will continue to suffer the following injuries and damages.

a. loss of any and all wages, salary, employment benefits, or other compensation denied or lost by reason of Targets Logistics' violations of the FMLA and/or USERRA.

b. compensatory and exemplary damages for intentional infliction of emotional distress.

c. Defendant has acted willfully and in the absence of good faith and could not have had a reasonable belief that its conduct was not a violation of the law. Therefore, an award of liquidated damages is requested within the meaning of the FMLA and USERRA. See 29 U.S.C. §§2615, 2617(a)(1)(A)(iii); 20 CFR §1002.312.

d. prejudgment interest on lost wages and benefits and postjudgment interest on all sums, including attorney fees.

e. severe emotional distress beginning December 17, 2014 and continuing.

IX. PRAYER

For these reasons, Johnson asks for judgment against defendant for all appropriate relief tailored to the harm suffered. .

WHEREFORE, PREMISE CONSIDERED, Plaintiff, Craig Allen Johnson, respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; liquidated and exemplary damages, together with interest as allowed by law; attorneys fees, expert witness fees, expenses and costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

By:/s/ *Jo Miller*

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